

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1-21 are pending in the present application, Claims 1, 2, 5, 10, 11, 13, and 18 are currently amended, and Claim 21 is added. Support for the amendment to Claims 1, 13, and 18 is found in the specification at page 10, lines 26-30, for example. Support for new Claim 21 is found in Claim 1, for example. The specification is amended to correct minor informalities. Formal drawings are submitted herewith. No new matter is added.

In the outstanding Office Action, the drawings were objected to for not showing every feature of Claims 5 and 7; Claims 1, 5, 7, 13, 15, and 18 are rejected under 35 U.S.C. §112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention; Claims 1, 4, 12, 13, and 14 were rejected under 35 U.S.C. §102(e) as anticipated by Sato et al. (U.S. Patent No. 6,400,689, hereinafter Sato); Claims 3 and 16 were rejected under 35 U.S.C. §103(a) as obvious over Sato in view of Koo (U.S. Patent Publication No. 2001/0032270); Claims 2, 5, and 6 were rejected under 35 U.S.C. §103(a) as obvious over Sato in view of Riggan et al. (U.S. Patent No. 6,490,252, hereinafter Riggan); Claims 7 and 15 were rejected under 35 U.S.C. §103(a) as obvious over Sato in view of Riggan, and further in view of Buhrke et al. (U.S. Patent No. 5,231,631, hereinafter Buhrke); Claims 8-10 were rejected under 35 U.S.C. §103(a) as obvious over Sato in view of Official Notice; Claims 11 and 17 were rejected under 35 U.S.C. §103(a) as obvious over Sato in view of Riggan, and further in view of Grandcolas et al. (U.S. Patent No. 5,867,153, hereinafter Grandcolas); Claims 18 and 20 were rejected under 35 U.S.C. §103(a) as obvious over Sato in view of Shaffer, (U.S. Patent No. 6,249,814); and Claim 19 was rejected under 35 U.S.C. §103(a) as obvious over Sato in view of Shaffer, and further in view of Grandcolas.

As a preliminary matter, Applicant respectfully requests that the correspondence address for this application be updated in accordance with the Power of Attorney filed on March 4, 2005.

With respect to the rejection of the drawings, Applicant respectfully submits that the figures show every element of Claim 5.

Claim 5 recites

the advanced manager including a management engine and a policy database;

the management engine operable to receive inter-device transmission data and inter-device negotiation data from at least one network device and compare the received data with the policy database; and

the management engine further operable to direct the at least one network device according to the policy database.

In a non-limiting embodiment, Fig. 2 shows a manager 210 connected to a plurality of network devices. The manager 210 in Fig. 2 is operable “to receive inter-device transmission data and inter-device negotiation data from at least one network device and compare the received data with the policy database,” and “to direct the at least one network device according to the policy database.” The specification at page 10, lines 1-3 states that “advanced manager 210 may include a number of different elements, as disclosed in greater detail in FIGURE 4 below.” Fig. 4 shows a manager 400 including a management engine 420 and a policy database 430. Thus, Applicant respectfully submits that the figures show every element of Claim 5.

With respect to the rejection of the drawings, Applicant respectfully submits that the figures show every element of Claim 7.

Claim 7 recites

receive bandwidth negotiation data and a bandwidth negotiation recommendation from at least one network device;

compare the bandwidth negotiation data and bandwidth negotiation recommendation with the policy database; and

submit a revised bandwidth recommendation based on the policy database.

In a non-limiting embodiment, Fig. 3 shows bandwidth negotiation in a network. In Fig. 3, advanced manager 310 receives bandwidth negotiation data and a bandwidth negotiation recommendation from gatekeeper 14. In Fig. 3, manager 310 submits a bandwidth response to gatekeeper 314. The specification at page 12, lines 23-25 states “the process for accepting or rejecting the bandwidth response is described more fully in FIGURE 4.” Fig. 4 shows a manager 400 that includes a policy database 430 that the manager 400 uses to compare the bandwidth negotiation data and bandwidth negotiation recommendation with the policy database. Thus, Applicant respectfully submits that the figures show every element of Claim 7.

In view of the above discussion, Applicant respectfully requests that the objection to the drawings be withdrawn.

With respect to the rejection of Claims 1, 13, and 18 under 35 U.S.C. 112, second paragraph, the noted antecedent basis informalities are corrected by the present amendment. However, Applicant respectfully points out that Claim 13 recites “the at least one network device” and not “the least one network device.” Claim 13 includes antecedent support for “the at least one network device” at lines 3-4 of Claim 13.

With respect to the rejection of Claim 5 under 35 U.S.C. §112, second paragraph, Applicant respectfully traverse the rejection. The specification contains support for the claimed “inter-device transmission data and inter-device negotiation data” on page 4, lines 20-23, for example.

With respect to the rejection of Claims 7 and 15 under 35 U.S.C. §112, second paragraph, Applicant respectfully traverse the rejection. The specification contains support

for the claimed “receive bandwidth negotiation data,” “bandwidth negotiation recommendation,” and “submit a revised bandwidth recommendation” on pages 12-13 and in Fig. 3, for example.

In view of the above discussion, Applicant respectfully submits that the claims comply with the requirements of 35 U.S.C. §112, second paragraph.

With respect to the rejection of Claim 1 under 35 U.S.C. §102(e) as anticipated by Sato, Applicant respectfully submits that Sato does not describe or suggest every element of Amended Claim 1.

Claim 1 is directed to a system for communicating information, including: a plurality of network devices each including at least one network communication port, each network device connected with at least one other network device through the at least one network communication port; an advanced manager operably coupled to the communication port of at least one network device, the advanced manager operable to classify functionality of at least one network device via the one network communication port based upon network transmission characteristics of the at least one network device, and manage the at least one network device based upon a determined functionality. This configuration facilitates real time management of the network devices.¹

Claim 1 recites “classify functionality of at least one network device via the one network communication port based upon network transmission characteristics of the at least one network device.” Indeed, Sato does not describe or suggest this element of amended Claim 1.

On the contrary, Sato describes network managing terminal 302 as a manager for the ATM network. Network managing terminal 302 is not described as classifying classify functionality of at least one network device via the one network communication port based

¹ Specification, page 5, lines 10-12.

upon network transmission characteristics of the at least one network device. Sato only discloses that network managing terminal 302 monitors all ATM switches 31-35 and has operating authority for the ATM switches 31-35.² ATM switches operate independently of the transmission characteristics of the data routed through them. ATM switches 31-35 also function in identical manners. Thus, there is no description or suggestion in Sato to have the network managing terminal classify the functionality of the ATM switches based upon the network transmission characteristics of the ATM switches.

The Office Action also relies on Fig. 10 to describe the claimed “advanced manager operable classify a functionality of the at least one network device via the one network communication port based upon network transmission characteristics of the at least one network device.”³

In particular, the Office Action asserts that trap conversion table 808a corresponds to the claimed advanced manager. However, 808a of Fig. 10 does not describe or suggest the claimed “advanced manager operable classify a functionality of the at least one network device via the one network communication port based upon network transmission characteristics of the at least one network device.” Sato describes 808a as a trap conversion table that receives trap information from the elements 801(a) for realizing ATM and as converting the trap information into influence range information.⁴ Sato goes on to describe the influence range information as “node fault, a link fault, a degree of fault and the like.”⁵

The outstanding Office Action asserts that the feature of a network communication port is inherent in Sato.⁶ Applicant respectfully submits that the assertion of inherency is insufficient to show that Sato inherently teaches the claimed “network communication port” and “determine the functionality of at least one network device via the one network

² Sato, col. 5, lines 5-15.

³ Office Action, page 4.

⁴ Sato, col. 8, lines 19-23.

⁵ Sato, col. 8, lines 23-25.

⁶ Office Action, page 4.

communication port” because the rejection fails to show “that the alleged inherent characteristic necessarily flows from the teachings of the applied prior art”⁷

However, the Official Action provides insufficient rationale for this finding of inherency. “The fact that a certain result may occur or be present in the prior art is not sufficient to establish inherency of that result or characteristic.”⁸ “To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’”⁹ Because the Official Action provides an insufficient explanation of why Applicants’ claimed features are inherent, Applicants submit the rejection is improper.¹⁰

Applicant respectfully submits that Shaffer does not cure the deficiencies of Sato. Shaffer only describes identifying network devices. There is no disclosure or suggestion to “classify a functionality of the at least one network device via the one network communication port based upon network transmission characteristics of the at least one network device.” The identification packets described by Shaffer only include names and addresses of the responding devices.¹¹

Furthermore, Applicant respectfully submits that Riggan does not cure the deficiencies of Sato. Riggan only discloses that “user traffic received at a first node (for

⁷See MPEP 2112 (emphasis in original) (citation omitted). See also same section stating that “[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic,” (emphasis in original). See also In re Robertson, 49 USPQ2d 1949, 1951 (Fed. Cir. 1999) (“[t]o establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill,’” citing Continental Can Co. v. Monsanto Co., 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991); and “[i]nherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient,” Id. at 1269 (citation omitted)).

⁸ In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1995, 1957 (Fed. Cir. 1993).

⁹ In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

¹⁰ MPEP § 2112, IV “Examiner must provide rationale or evidence tending to show inherency.”

¹¹ Shaffer, col. 3, lines 55-57.

example, an end user node) is or has been classified according to traffic type...¹² Riggan classifies traffic to determine if the bandwidth limit has been exceeded or is likely to be exceeded.¹³ Thus, Riggan only describes classifying traffic and not classifying the functionality of the at least one network device. Furthermore, Riggan's description of identifying user data according to any of a plurality of data types, at Col. 2, lines 9-11, does equate to classifying the functionality of the at least one network device for at least the reasons stated above.

Furthermore, Applicant respectfully submits that Grandcolas does not cure the deficiencies of Sato. Grandcolas only describes identifying a program (or software) and the type of device.¹⁴ Identifying is not the same as classifying the functionality of the at least one network device based upon network transmission characteristics of the at least one network device.

In view of the above-noted distinctions, Applicant respectfully submits that amended Claim 1 (and Claims 2-12) patentably distinguish over Sato, Shafer, Riggan, and Grandcolas. In addition, Applicant respectfully submits that independent Claims 13, 18, and 21 (and Claims 14-17 and 19-20) patentably distinguish over Sato, Shafer, Riggan, and Grandcolas for at least the reasons stated above.

Finally, with respect to rejection of Claims 8-10 where the Office Action relies on Official Notice, the Examiner may take official notice of facts outside of the record which are capable of instant and unquestionable demonstration as being "well-known" in the art. *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970). As set forth in M.P.E.P. § 2144.03, if an applicant traverses an assertion made by an Examiner while taking official notice, the Examiner should cite a reference in support of their assertion.

¹² Riggan, col. 1, lines 58-60, emphasis added.

¹³ Riggan, col. 1, lines 62-64.

¹⁴ Grandcolas, col. 11, lines 57-58 and col. 12, lines 15-20.

In addition, Applicants respectfully traverse those grounds for rejection relying of Official Notice. Applicants do not consider the features for which Official Notice were taken to be "of such notorious character that official notice can be taken." Therefore Applicants traverse this assertion. "The examiner should cite a reference in support of his or her position."¹⁵

Consequently, in light of the above discussion and in view of the present amendment, the present application is believed to be in condition for allowance and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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¹⁵MPEP 2144.03, page 2100-129, left column, second full paragraph of MPEP 2144.03.

IN THE DRAWINGS

The attached sheet of drawings includes changes to Figs. 1-4. These sheets, which include Figs. 1-4, replace the original sheets including Fig. 1-4.

Attachment: Replacement Sheets